

said court may be enforced by attachment and sequestration as aforesaid; and if the said judgment, decree, decision or order be for the payment of money the property sequestered may, at the discretion of the court, be applied to the purpose for which such judgment, decree, decision or order was given; and if the judgment, decree, decision or order shall be for the payment of costs, and the party or parties against whom the said judgment, decree, decision or order for the payment of costs shall be rendered shall be entitled to a distributive share of the estate in which the suit is involved, the court may order said costs to be paid out of said distributive share.

Guardians.

The orphans' court has no jurisdiction to authorize a guardian to invest the ward's funds in a loan to the guardian himself upon his promissory note bearing interest. *Fidelity Co. v. Freud*, 115 Md. —.

This section referred to in discussing the authority *vel non* of the orphans' court, to appoint a guardian *ad litem*. *Williams v. Holmes*, 9 Md. 289.

This section referred to in discussing the jurisdiction of equity to appoint a guardian. *Corrie's Case*, 2 Bl. 502.

As to the jurisdiction of the orphans' court to allow a guardian to exceed in expenditures the income of a ward's estate, as to personalty and also as to real estate, see sec. 165.

Costs and counsel fees.

The powers of the orphans' court can not be extended by construction or implication. The power to allow a fee for advice given an administrator in his individual capacity and before his appointment, denied. *Flater v. Weaver*, 108 Md. 677. And see, *Browne v. Preston*, 38 Md. 380; *Townshend v. Brooke*, 9 Gill, 91.

The orphans' court has no power to allow residuary legatees costs and counsel fees incurred in fighting the claim of an executrix. *Bell v. Funk*, 75 Md. 371.

Generally.

The jurisdiction of the orphans' court is limited to inquiries relative to the probate, such as testamentary capacity, fraud, undue influence and the execution of the will. Courts of law and equity must determine what passes under the will, and questions of title dependent upon the operation and effect of the will, and decide upon the right of disposition. *Schull v. Murray*, 32 Md. 15. And see, *Ramsey v. Welby*, 63 Md. 588; *State v. Warren*, 28 Md. 356; *Blackburn v. Craufurd*, 22 Md. 466; *Michael v. Baker*, 12 Md. 169; *Spencer v. Ragan*, 9 Gill, 482.

Orphans' courts are courts of special limited jurisdiction, and are confined to the letter of their authority. They must exercise their powers in accordance with the law, and the necessary jurisdictional facts must not be left to inference but must affirmatively appear upon the face of their proceedings. This section referred to in construing article 21, section 81—see notes thereto. *Norment v. Brydon*, 44 Md. 116; *Taylor v. Bruscup*, 27 Md. 225; *Lowe v. Lowe*, 6 Md. 352; *Conner v. Ogle*, 4 Md. Ch. 452.

This section does not mitigate against the authority of the orphans' court to determine who are next of kin and entitled to distribution under section 235—see notes thereto. *Blackburn v. Craufurd*, 22 Md. 466. *Cf. Ramsey v. Welby*, 63 Md. 588; *State v. Warren*, 28 Md. 356.

The orphans' court has no jurisdiction to determine the validity and amount of claims due creditors, although such claims may be passed for payment. *Levering v. Levering*, 64 Md. 413; *Schwallenberg v. Jennings*, 43 Md. 559; *Bowie v. Ghiselin*, 30 Md. 556; *Miller v. Dorsey*, 9 Md. 323.

The orphans' court has no jurisdiction to pass on title to personal property except under section 244 on a charge of concealment by the administrator. How other questions of title to personal property may be determined. *Fowler v. Brady*, 110 Md. 208.